

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 24.03.2017

CWP No.6816 of 2016 (O&M)

Jugesh Chander

... Petitioner

Vs.

United India Insurance Company & ors.

... Respondents

CWP No.9888 of 2016 (O&M)

Vinod Kumar

... Petitioner

Vs.

United India Insurance Company & ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.K.Walia, Advocate
for the petitioner.

Mr. D.R.Bansal, Advocate
for the respondents.

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of the above-mentioned writ petitions as the same question of law is involved in them which can be conveniently dealt with by a common order.

Case is taken up for final disposal.

Heard counsel.

Opinion formed.

Reasons for dismissal are:-

The writ petitions deserve to be dismissed firstly, in view of

direction No.2 by Supreme Court in **State of Uttar Pradesh & ors. vs. Arvind Kumar Srivastava & ors., 2015(1) SCC 347**, which reads as follows:

“2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

Similarly situated persons approached this Court in the year 2013 and obtained an interim order that further promotions will be subject to the outcome of the writ petition. That case bearing CWP No.16493 of 2013 (Sunita Sharma & ors. vs The United India Insurance Company Ltd. & ors.) was decided on 05.08.2015 (Annex P-12). This has brought the petitioners to approach this court in 2016 jumping on the bandwagon. By that time limitations had set in and I wonder what would be the result if suits were filed by the petitioners claiming the same relief if not dismissal, the suit would be beyond three years from the cause of action and barred by time. The time limit for suits if exceeded then the writ ordinarily would not issue. See, **State of Madhya Pradesh v. Bhailal Bhai, AIR 1964 SC 1006**.

The principle is one of prudence. The exception is alone in fundamental rights and even there unreasonableness delay would have to be addressed. This is the second reason for dismissal.

The right to promotion is not a fundamental right and only a civil right to which limitation applies. However, consideration is a valuable right. Promotion is a personal right, which can be asserted or foregone if party wishes. No one compels promotion. If the petitioner was happy with his lot and did not seek legal recourse to obtain relief and waited and watched others litigate, he is not entitled to similar relief as those who were similarly placed but were vigilant and approached Court without delay. Then direction No. 2 above comes into play, which is an exception carved out from the general rule in direction No. 1 in *Arvind Kumar Srivastava* case that similarly situated persons should be treated similarly. But this is open to waiver and acquiescence by fence-sitters, like the petitioners in these petitions.

In any case and thirdly, in cases of promotion, the approach should be within a period of six months or at the most one year from after which it will be advisable for the Court to refuse writ and dismiss his plea on delay in view of statement of law in *P.S.Sadasivaswamy vs. State of Tamil Nadu* 1975 SCR(2) 356.

The principle in *Arvind Kumar Srivastava* is that when right created by judicial order is in *rem*, then direction No.1 applies to all persons, who are similarly situated but if it in *personam* then it is addressed to those who secured relief and none other which the orders relied upon do.

Besides, persons likely to be effected have not impleaded as respondents.

For the foregoing reasons, I do not find any sufficient reason by way of explanation for the delay and laches in the pleadings in the petition to spark off a decision on merits in these petitions and would thus dismiss the same. This is the fourth reason why I decline these two cases. Merits take a back seat when delay, laches and bar of limitation take the front wheel and drive the case in back gear.

24.03.2017

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**[RAJIV NARAIN RAINA]
JUDGE**

*1. Whether speaking/reasoned:
2. Whether Reportable:*

*Yes
No*